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April 9, 2008

The Honorable Andrew J. Peck
Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: 07-CV-3246 (BSJ)(AJP)
Roberto Rivera, M.D. vs.
Ruth Smith, M.D., Jess A. Bunshaft, Esq.,
and St. Vincent's Catholic Medical Centers

MEMO ENDORSED - /2

Dear Judge Peck:

I am the plaintiff in the above-named case who wishes to make an expedited discovery request for three (3) documents that I need and that are in the custody, control, and possession of the defendants, in particular, St Vincent's Catholic Medical Centers. I have already spoken with counsel for the defendants, Nancy V. Wright, Esq., who assures me that the defendants will oppose any request that I make for said documents and thus, I do not wish to wait the thirty (30) days after a formal Request for Production of Documents is made, to have the request refused.

The three documents I need are copies of patient charts from the clinic in which both Ms. Frances Dirks, F.N.P. and I worked, the Bellevue Men's Shelter Clinic. For two of the charts I know the names of the patients, their D.O.B. and shelter I.D. numbers so those should be easy to obtain. For the third patient, I do not know the name of the patient but the patient I am speaking of is well-remembered and referred to by Ms. Dirks, in both her letter of complaint against me (Complaint #10, "On December 2, 2005...") as well as her N.Y.P.D. police complaint against plaintiff dated 05/26/2006. Furthermore, this unnamed patient is also cited by Ms. Mimi Santiago, Nurse Coordinator, in her deposition, and myself, in the 2nd Amended Complaint, Paragraph #32 (the infamous "You're insidious..." confrontation).

The reasons I have need of copies of these three patient charts is that at present, the defendant, St. Vincent's Catholic Medical Centers, by virtue of its being current employer of all the witnesses and retaining full control over all the evidence, essentially controls the case. I do not have the access to charts that will help me prove my case, that I might have, were I still employed at St. Vincent's Hospital. Thus, I have no access to the evidence, nor am I able to obtain more than a few tepid statements of support from witnesses that I thought would prove friendly but who clearly know which side their toast is buttered on. That leaves me with little but my own affirmation as to what happened, and that is not going to be enough to withstand a summary judgement motion, let alone a trial. I need FACTS, facts that I feel will show that Ms. Dirks behavior was completely unprofessional, as well as utterly unacceptable during the three years we were supposed to be working together professionally and collegially, after our personal break up. Those facts are contained in written form in those three patient charts as well as many other patient charts whose names I do not recall. In the three cases whose patient charts I need access

to, I either stated my displeasure towards Ms. Dirks' behavior directly on the chart, or implied it clearly in narrative form in those records. That I chose not to raise an issue at that time, was due to my love for her and fear that she would just up and leave.

It is my intention to prove at trial that the two warring factions here, the plaintiff and Ms. Dirks, both share equal responsibility for the childish and immature behavior they displayed over the three last years of plaintiff's tenure at Bellevue, and that neither was victim nor villain, or, alternatively, that both were equally victim and villain, as shown by their behavior. I need facts to withstand summary judgement and ultimately prevail and those three charts, written years ago, contain those facts, not just general affirmations on my part that I was trying to be professional and she was not.

Sincerely yours,

Roberto Rivera
Plaintiff *pro se*
82 La Salle Drive
Yonkers, NY 10710
914-482-0734

cc: Copy simultaneously served upon
Nancy V. Wright, Esq.
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
Of counsel, the defendants.

Dated: Yonkers, NY
April 9, 2008

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Plaintiff to produce file 2
Robert Clark as requested
by defendant Dr. Rivera / and
he has advised Plaintiff to forward
of file 2 to Dr. Rivera,
I presume Dr. Rivera is interested
for as follows: any evidence or
statements by Dr. Rivera about the
Dirks case and - its family, most
material information under the
Robert's name, any material information
from all parties (except as contained in
Dr. Rivera's complaint about Dr. Sels).

SO ORDERED:

BY FAX

Hon. Andrew Jay Peck
United States Magistrate Judge

FAX TRANSMITTAL SHEET



**ANDREW J. PECK
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT**

Southern District of New York
United States Courthouse
500 Pearl Street, Room 1370
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933
Telephone No.: (212) 805-0036

Dated: April 10, 2008

Total Number of Pages: 3

TO	FAX NUMBER
Roberto Rivera, M.D.	914-961-5729
Nancy V. Wright, Esq.	212-490-3038

TRANSCRIPTION:

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Defendant is to produce the 2 patient charts on receipt of their identification by Dr. Rivera (and the third chart if defendant is able to identify the patient), and produce the charts in redacted form as follows: only produce any statements from Dr. Rivera about Ms. Dirks contained in the charts, redacting all other information including the patient's name, any medical information about the patient (except as contained in Dr. Rivera's complaints about Ms. Dirks).

Copy to: Judge Barbara S. Jones